

UNCLASSIFIED

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ACTION ARA-14

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FM AMEMBASSY BUENOS AIRES
TO SECSTATE WASHDC 2820

[REDACTED] BUENOS AIRES 7848

E.O. 11652: GDS
TAGS: SHUM, AR
SUBJECT: PARALLEL DETENTION-THE CASE OF LILIANA VOGLER
REF: (A) STATE 236793, (B) STATE 244239

1. LILIANA VOGLER AND MORE THAN 1,300 OTHER PERSONS ARE HELD IN ARGENTINA BOTH UNDER STATE OF SIEGE (PEN) EXECUTIVE DETENTION AND JUDICIALLY ORDERED PREVENTIVE DETENTION. REFTEL A IS CORRECT THAT EITHER PEN DECREE OR A PREVENTIVE DETENTION ORDER IS SUFFICIENT LEGAL BASIS FOR DETENTION. IT IS IMPORTANT TO POINT OUT THAT IN THESE CASES OF PARALLEL DETENTION THE RECENTLY RESTORED RIGHT OF OPTION PROCEDURES ARE NOT AVAILABLE. THE GOA, TO DATE, WILL NOT PROCESS RIGHT OF OPTION PETITIONS IN THOSE CASES WHERE PRISONERS ARE ALSO HELD UNDER JUDICIALLY ORDERED PREVENTIVE DETENTION.

2. ARGENTINE OPERATING PROCEDURES IN PROCESSING TERRORIST AND SUBVERSIVE CASES LEAD TO THIS DOUBLE SYSTEM OF DETENTION. A SUSPECTED INDIVIDUAL IS PICKED UP AND "INTERROGATED". A DECISION IS THEN MADE EITHER TO RELEASE, PUBLICLY DETAIN UNDER PEN, OR SECRETLY HOLD THE INDIVIDUAL. SUBSEQUENTLY, AFTER ADDITIONAL REVIEW A DECISION MAY BE MADE TO ELIMINATE IRREDEEMABLE TERRORISTS. IN POLICE JARGON THIS SORTING OUT PROCESS IS KNOWN AS THE "RIFF".

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ARGENTINA PROJECT (S200000044)
U.S. DEPT. OF STATE, A/RPS/IPS
Margaret P. Gaffield, Director
Exemptions(s):
☒ Release ☐ Excise ☐ Deny
Declassify: ☐ In Part ☒ In Full
☐ Classify as ☐ Extend as ☐ Downgrade to
Date ☐ Declassify on ☐ Reason

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3. IN CASES WHERE THE PERSON IS PUBLICLY HELD UNDER PRESIDENTIALLY DECREED EXECUTIVE DETENTION (PEN) THE FACTS OF THE CASE ARE REVIEWED AT A LATER TIME AND A JUDGEMENT MADE WHETHER THE GOVERNMENT HAS ENOUGH CLEAR AND INTRODUCIBLE EVIDENCE OF A CRIME TO BRING THE PERSON TO TRIAL. IF THIS IS FELT TO BE THE CASE, A DECISION IS THEN MADE WHETHER THE PERSON SHOULD BE TRIED BEFORE A CIVILIAN CRIMINAL COURT OR BEFORE A MILITARY COUNCIL.

4. THE PERSON IS THEN TURNED OVER THE SELECTED JUDICIAL SYSTEM FOR CRIMINAL PROCEEDING IN ACCORDANCE WITH THE CIVIL CODE OF CRIMINAL PROCEDURES OR THE CODE OF MILITARY JUSTICE. UNDER EITHER OF THESE PROCEDURES PREVENTIVE DETENTION IS NORMALLY ORDERED BY THE INVESTIGATING JUDGE TO HOLD THE DEFENDANT WHILE THE INVESTIGATORY PROCEDURES TAKE PLACE. THIS INVESTIGATION MAY LAST FOR ONE OR TWO YEARS IN CIVILIAN COURTS OR MAY BE VERY SWIFT AT TIMES IN MILITARY COURTS.

5. IN THE MAJORITY OF SUCH CASES, THE EXECUTIVE DETENTION DECREE IS NOT RESCINDED. PERSONS ARE HELD UNDER PARALLEL LEGAL AUTHORITIES. ARGENTINE OFFICIALS STATE THAT THERE IS NO INCONSISTENCY IN THIS, AS EXECUTIVE DETENTION IS DECREED DUE TO THE PERSON'S POSING A THREAT TO THE PEACE AND GOOD ORDER OF THE NATION UNDER STATE OF SIEGE CONDITIONS. ON THE OTHER HAND, PREVENTIVE DETENTION IS PART OF A CRIMINAL PROCEEDING AGAINST THE INDIVIDUAL FOR SPECIFIC ILLEGAL ACTIVITIES.

6. ANOTHER PURPOSE OF THE DUAL DETENTION AUTHORITY IS TO INSURE THAT PERSONS AGAINST WHOM THERE ARE OUTSTANDING UNRESOLVED CRIMINAL CHARGES ARE NOT RELEASED AFTER THE CRIMINAL CHARGES ARE ADJUDICATED. PEN INSURES THEIR CONTINUED DETENTION. THE PROBLEM DERIVES FROM PAST EXPERIENCES WITH A BADLY INTIMIDATED

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JUDICIARY WHO SUMMARILY FREED SOME SUBVERSIVES AFTER BEING THREATENED.

7. IN SUMMARY, LILIANA VOGLER AND PERHAPS UP TO A QUARTER OF THE PERSONS PRESENTLY HELD UNDER EXECUTIVE DETENTION ARE NOT ELIGIBLE TO PETITION FOR THE RIGHT OF OPTION UNTIL THE CRIMINAL CHARGES AGAINST THEM HAVE BEEN ADJUDICATED -- A PROCEDURE, WHICH AT PRESENT CAN TAKE UP TO TWO YEARS IN ARGENTINA.

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